



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

July 31, 2020

Via electronic mail

Via electronic mail

Ms. Alexis R. Long
Legislative Specialist for Regulatory Matters
Legal Counsel Division
City of Chicago
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RE: OMA Request for Review – 2019 PAC 60134

Dear [REDACTED] and Ms. Long:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2018)). For the reasons explained below, the Public Access Bureau concludes that the Chicago Crisis Intervention Advisory Committee (Advisory Committee) is a public body that improperly held meetings without adhering to the requirements of OMA.

BACKGROUND

On October 11, 2019, [REDACTED] on behalf of the [REDACTED] Board of Chicago, submitted a Request for Review to the Public Access Bureau alleging that the Advisory Committee and its four subcommittees have held meetings without following the requirements of OMA. She contended that the Advisory Committee is a public body subject to the requirements of OMA, but has not opened its meetings to the public, posted notices and agendas in advance of the meetings, or kept meeting minutes. [REDACTED] explained that the

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Advisory Committee was created pursuant to the Chicago Police Department Consent Decree (Consent Decree) and directed this office to parts of the Consent Decree describing the creation of the Advisory Committee and its functions and membership. She noted that the City of Chicago Mayor's Office (Mayor's Office) chairs the Advisory Committee. ██████████ contended that the Consent Decree "show[s] the Advisory Committee is a part of the structure of and accountable to city government, has deliberative and investigative responsibilities, and its recommendations impact the policies and practices of city government."¹ Based on records related to the Advisory Committee that she received in response to a Freedom of Information Act (FOIA) request, ██████████ believed that the Advisory Committee had met on at least a quarterly basis and that it held a meeting on July 22, 2019. She asserted, however, that the records reflected that the sub-committees had met as recently as September 9, 2019, and September 13, 2019. ██████████ contended: "No information is available that indicates that the [Advisory Committee] posted notices and agendas for any of its quarterly meetings on either the Consent Decree, Chicago Police Department, or Mayor's websites."² Likewise, she asserted that no notices, agendas, or formal meeting minutes were posted online for the Advisory Committee's four subcommittees.

As an initial matter, section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2018)) provides, in pertinent part:

A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General **not later 60 days after the alleged OMA violation. If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation.** The request for review must be in writing, must be signed by the requester, and must include a summary of the facts supporting the allegation. (Emphasis added.)

In this case, the Advisory Committee appears to have met on July 22, 2019, which is more than 60 days before ██████████ submitted her Request for Review. As noted above, however, ██████████

¹Letter from ██████████, to Sarah Pratt, Illinois Public Access Counselor (October 11, 2019), at 1.

²Letter from ██████████, to Sarah Pratt, Illinois Public Access Counselor (October 11, 2019), at 1.

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stated that prior to receiving records pursuant to a FOIA request on October 7, 2019, she was not aware of the meetings held by the Advisory Committee and its subcommittees because no meeting notices and agendas were posted on the websites of the Mayor's Office or other public bodies involved in the Consent Decree. [REDACTED] further contended:

On September 21, 2019, before submitting the record request, the Consent Decree Monitor was asked about the Advisory Committee, its membership, and the OMA. She did not offer any answers. It seems unfair to suggest that the average person exercising due diligence should have known where to look to find out when and where and whether the [Advisory Committee] was meeting when this information wasn't evident to the Consent Decree Monitor.^[3]

[REDACTED] provided this office with facts sufficient to demonstrate that, despite having exercised reasonable diligence, she did not discover that the Advisory Committee and its subcommittees had met to discuss recommendations to the Mayor's Office within 60 days of its July 22, 2019, meeting. Although the Consent Decree provides that the Advisory Committee is to meet quarterly at minimum,⁴ it does not specify the dates of those quarterly meetings. There is no indication that the City had provided public notice of the committee gatherings or posted copies of any minutes of those gatherings. Further, [REDACTED] alleged that the subcommittees have met as recently as September 2019, which was within 60 days of her Request for Review submission on October 11, 2019. Because [REDACTED] did not discover the alleged OMA violations within 60 days despite using reasonable diligence, and because this Request for Review was submitted within 60 days of [REDACTED] discovery of the alleged OMA violations, this complaint was submitted within the time limits set out in section 3.5(a) of OMA.

On October 22, 2019, this office forwarded a copy of the Request for Review to the Mayor's Office and asked it to address the allegations in [REDACTED] Request for Review. In particular, this office asked the Mayor's Office to address [REDACTED] claim that the Advisory Committee and its four subcommittees are "public bodies" as defined under section 1.02 of OMA (5 ILCS 120/1.02 (West 2018)). This office asked the Mayor's Office to include information regarding the governance and operations of those entities, such as their membership, meeting schedules, assigned duties, and the impact of their decisions or recommendations. On

³Letter from [REDACTED] Community Mental Health Board of Chicago, to Sarah Pratt, Illinois Public Access Counselor (October 11, 2019), Footnote 5, at 2.

⁴*State of Illinois v. City of Chicago*, Case No. 17-cv-6260, Consent Decree, IV. Crisis Intervention, I. Advisory Committee, 129 (filed January 31, 2019), <http://chicagopoliceconsentdecree.org/wp-content/uploads/2019/02/FINAL-CONSENT-DECREE-SIGNED-BY-JUDGE-DOW.pdf>.

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November 4, 2019; this office received a written response from the City of Chicago Department of Law (Department) on behalf of the Mayor's Office. On November 5, 2019, this office forwarded a copy of the written response to [REDACTED]; she replied on December 20, 2019.

DETERMINATION

"In order that the people shall be informed, the General Assembly finds and declares that it is the intent of [OMA] to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2018).

Section 1.02 of OMA (5 ILCS 120/1.02 (West 2018)) defines a "public body" as:

[A]ll legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue, except the General Assembly and committees or commissions thereof.

An "advisory body," for purposes of OMA, is an entity that has defined responsibilities and is a formal part of the structure of the public body that it advises. *Board of Regents of Regency University System v. Reynard*, 292 Ill. App. 3d 968, 977-78 (4th Dist. 1997). In contrast, OMA "is not intended to open to the public the deliberations of merely informal advisory committees who discuss internal" affairs of a public body. *Pope v. Parkinson*, 48 Ill. App. 3d 797, 800 (4th Dist. 1977). Factors to consider in determining whether a group constitutes an advisory body under OMA include:

who appoints the members of the entity, the formality of their appointment, and whether they are paid for their tenure; the entity's assigned duties, including duties reflected in the entity's bylaws or authorizing statute; whether its role is solely advisory or whether it also has a deliberative or investigative function; whether the entity is subject to government control or otherwise accountable to any public body; whether the group has a budget; its place within the larger organization or institution of which it is a part; and the impact of decisions or recommendations that the group makes. *University Professionals of Illinois v. Stukel*, 344 Ill. App. 3d 856, 865 (1st Dist. 2003).

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In *Stukel*, the plaintiff alleged that a group of presidents and chancellors of public universities (Council), which made recommendations to the Illinois Board of Higher Education (IBHE), violated OMA by meeting privately before IBHE meetings to discuss issues related to funding for public education. *Stukel*, 344 Ill. App. 3d at 857-58. The court held that the Council was not an advisory body of IBHE in part because it was not incorporated into the formal organizational structure of IBHE, a factor that the court identified as a "primary consideration in determining whether an organization is a public body under the Meetings Act." *Stukel*, 344 Ill. App. 3d at 865. The court explained that "the Council was formed by the presidents and chancellors of the various state universities to express its views to the IBHE. Granted, its role is advisory but that role is one that the Council [and not IBHE] created." *Stukel*, 344 Ill. App. 3d at 866. The court also noted that the plaintiff's complaint did not allege that the group had a "deliberative or investigative function in relation to the IBHE or that the Council is subject to government control. It does not appear that the Council is otherwise accountable to any public body. It does not appear to have a budget[.]" *Stukel*, 344 Ill. App. 3d at 866. Further, "no member of the Council is a member of the IBHE." *Stukel*, 344 Ill. App. 3d at 866; *see also Pope v. Parkinson*, 48 Ill. App. 3d 797, 800 (4th Dist. 1997) (committee of four faculty members and four students that advised director of sports stadium and chancellor was not an advisory body because OMA "is not intended to open to the public the deliberations of merely informal advisory committees who discuss internal University affairs."); *People ex rel. Cooper v. Carlson*, 28 Ill. App. 3d 569, 572 (2d Dist. 1975) (OMA does not apply to voluntary "technical staff" meetings of "department heads or employees who seek to improve with dispatch their performance or function of assisting in the conduct of the people's business.").

Conversely, in *Reynard*, the appellate court concluded that the Athletic Council of Illinois State University (ISU) was an advisory body subject to FOIA. *Reynard*, 292 Ill. App. 3d at 979. The Athletic Council serves "as an advisory body to the athletic director, with primary advisory responsibility to the president. It gives advice on the development of budgets and policies governing the intercollegiate athletic program." *Reynard*, 292 Ill. App. 3d at 971. The athletic director "is free to reject its advice and there have been occasions when he has done so. The Council deals only with internal ISU matters, it has no budget, and none of its members are paid." *Reynard*, 292 Ill. App. 3d at 972. In concluding that the Athletic Council was an advisory body subject to the requirements of OMA, however, the court emphasized that the Council is "part of the formal organizational structure of ISU and its duties and responsibilities are set forth in the supplement [to the bylaws of the ISU Senate]. The broad scope of the Council's responsibilities as set forth in the supplement contrasts sharply with the limited duties of the committee in *Pope [v. Parkinson]*." *Reynard*, 292 Ill. App. 3d at 978.

In this case, the Consent Decree between the State of Illinois and the City of Chicago (City) requires the City to implement various reforms to the Chicago Police

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Department; the decree was approved by a Federal judge on January 31, 2019.⁵ Part IV of the Consent Decree addresses reforms to improve behavioral and mental health crisis interventions.⁶ Relevant to this matter, section I, paragraph 128, of that part provides that "[t]he City will have a crisis intervention response advisory committee ("Advisory Committee") with subject matter expertise and experience that will assist in identifying problems and developing solutions and interventions designed to improve outcomes for individuals in crisis who require City services."⁷ Paragraph 129 further provides: "The Advisory Committee, at a minimum, will meet quarterly to review and recommend improvements to the City's overall response to individuals in crisis, with consideration to areas such as coordinated crisis response; data collection and evaluation; community engagement and awareness; service outreach and prevention; and the CIT [Crisis Intervention Team] Program."⁸

In its response to this office, the Department disputes ██████████ claim that the Advisory Committee and its four subcommittees are "public bodies" subject to the requirements of OMA. The Department confirmed that the Mayor's Office chairs the Advisory Committee, which is comprised "of volunteer organizations and individuals, with expertise and experience in crisis intervention, who meet quarterly at a minimum."⁹ According to the Department, "[t]he Advisory Committee independently chose to form subcommittees to efficiently achieve its objective."¹⁰ The Department argued that the Advisory Committee did not meet the characteristics of a public body.

⁵Chicago Police Consent Decree, Consent Decree Fact Sheet (last visited June 9, 2019), <http://chicagopoliceconsentdecree.org/wp-content/uploads/2019/02/Consent-Decree-Fact-Sheet-Jan-31-2019.pdf>.

⁶*State of Illinois v. City of Chicago*, Case No. 17-cv-6260, Consent Decree, IV. Crisis Intervention (filed January 31, 2019), <http://chicagopoliceconsentdecree.org/wp-content/uploads/2019/02/FINAL-CONSENT-DECREE-SIGNED-BY-JUDGE-DOW.pdf>.

⁷*State of Illinois v. City of Chicago*, Case No. 17-cv-6260, Consent Decree, IV. Crisis Intervention, I. Advisory Committee, 128 (filed January 31, 2019), <http://chicagopoliceconsentdecree.org/wp-content/uploads/2019/02/FINAL-CONSENT-DECREE-SIGNED-BY-JUDGE-DOW.pdf>.

⁸*State of Illinois v. City of Chicago*, Case No. 17-cv-6260, Consent Decree, IV. Crisis Intervention, I. Advisory Committee, 129 (filed January 31, 2019), <http://chicagopoliceconsentdecree.org/wp-content/uploads/2019/02/FINAL-CONSENT-DECREE-SIGNED-BY-JUDGE-DOW.pdf>.

⁹Letter from Alexis R. Long, Legislative Specialist for Regulatory Matters, City of Chicago, Department of Law, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (November 4, 2019), at 1.

¹⁰Letter from Alexis R. Long, Legislative Specialist for Regulatory Matters, City of Chicago, Department of Law, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (November 4, 2019), at 1.

To determine whether the Advisory Committee is a "public body" under OMA, this office will evaluate the Department and [REDACTED]'s arguments under the *Stukel* factors.

(1) Who appoints the members of the entity, the formality of their appointment, and whether they are paid for their tenure

The Department asserted that members of the Advisory Committee are not appointed but instead invited to participate and represent "a collection of City and local government agencies and departments, academic researchers, community organizations, advocacy groups, and individuals."¹¹ The Mayor's Office invites participants in accordance with the Consent Decree, which provides:

132. The Advisory Committee will be chaired by the Mayor's Office. The Mayor's Office will invite individuals who have personally experienced a behavioral or mental health crisis, people with experience working with individuals in crisis, and experts with knowledge in law enforcement responses to individuals in crisis. At a minimum, the Mayor's Office will invite individuals from the following groups: first responders; the CIT Coordinator; OEMC; county and city hospitals, health care providers, and mental health professionals; the Cook County State's Attorney's Office; the Cook County Public Defender's Office; at least one academic research entity; community behavioral and mental health professionals; advocacy groups for consumers of behavioral and mental health services; behavioral and mental health service providers; homeless service providers; substance abuse service providers; persons with lived experiences of behavioral or mental health crises; and other similar groups.^[12]

¹¹Letter from Alexis R. Long, Legislative Specialist for Regulatory Matters, City of Chicago, Department of Law, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (November 4, 2019), at 2.

¹²*State of Illinois v. City of Chicago*, Case No. 17-cv-6260, Consent Decree, IV. Crisis Intervention, I. Advisory Committee, 132 (filed January 31, 2019), <http://chicagopoliceconsentdecree.org/wp-content/uploads/2019/02/FINAL-CONSENT-DECREE-SIGNED-BY-JUDGE-DOW.pdf>.

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The Department contended that it did not have a formal appointment or selection process, asserting that the invited organizations select their own representatives to participate. The Department further contended that the Advisory Committee is not accountable to the City, and members do not face consequences if they do not attend. Additionally, the Department stated that members are not paid for their participation.

(2) The entity's assigned duties, including duties reflected in the entity's bylaws or authorizing statute

The Department stated that the Advisory Committee has neither bylaws nor an authorizing statute. It argued that the Advisory Committee provides only technical expertise on a single subject matter. In particular, the Department argued that "the Advisory Committee has a very limited purpose, which is to make recommendations to improve crisis response[.]" as set forth in the Consent Decree.¹³ The Consent Decree provides that:

130. The City will request that the Advisory Committee provide guidance on crisis response-related policies, procedures, and training of City agencies, including CPD and OEMC, and assist the City in developing and expanding current strategies for responding to individuals in crisis, including reducing the need for police-involved responses to individuals in crisis and developing municipal and community resources, such as pre- and post-arrest diversion resources and alternative response options (like drop-off centers, mobile crisis teams, a central non-emergency crisis line). The City will further request that in providing the guidance detailed above the Advisory Committee will consider specific strategies for responding to children and youth when they experience a behavioral or mental health crisis.¹⁴

In her reply to this office [REDACTED] disputed the Department's characterization of the role of the Advisory Committee as informal and limited. She emphasized the significance of the Consent Decree, asserting that extensive negotiations, deliberations, and public input went

¹³Letter from Alexis R. Long, Legislative Specialist for Regulatory Matters, City of Chicago, Department of Law, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (November 4, 2019), at 4.

¹⁴*State of Illinois v. City of Chicago*, Case No. 17-cv-6260, Consent Decree, IV. Crisis Intervention, I. Advisory Committee, 130 (filed January 31, 2019), <http://chicagopoliceconsentdecree.org/wp-content/uploads/2019/02/FINAL-CONSENT-DECREE-SIGNED-BY-JUDGE-DOW.pdf>.

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into the development of the Consent Decree. She also argued that "[t]he Consent Decree has the same effect as a government resolution or statute and can be enforced by the court if the parties to the agreement do not comply with the orders."¹⁵

(3) Whether the entity's role is solely advisory or whether it also has a deliberative or investigative function

The Department argued that the Advisory Committee is solely advisory, as its "only role is to advise on the single issue of crisis intervention response."¹⁶ The Department also argued that the Advisory Committee did not have any investigative or deliberative role. According to the Department, "[t]he final product of the Advisory Committee meetings will be recommendations the City may choose to accept or reject."¹⁷

argued that the Advisory Committee's duties and meeting materials established that it is a deliberative body. She emphasized that the Consent Decree required the City to respond to the Advisory Committee's recommendations and provide reasons for not adopting recommendations.

(4) Whether the entity is subject to government control or otherwise accountable to any public body

The Department asserted that the Advisory Committee is not subject to control by a public body. The Department acknowledged that the Mayor's Office chairs the Advisory Committee, but argued that it did not have control over the Committee's work or recommendations, and that most of the members "are organizations with no connection to the City."¹⁸ The Department contended that the Advisory Committee "does not possess any control over any part of the government, nor is it controlled by any public body."¹⁹

¹⁵E-mail from ██████████ to AAG Teresa Lim (December 20, 2019).

¹⁶Letter from Alexis R. Long, Legislative Specialist for Regulatory Matters, City of Chicago, Department of Law, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (November 4, 2019), at 5.

¹⁷Letter from Alexis R. Long, Legislative Specialist for Regulatory Matters, City of Chicago, Department of Law, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (November 4, 2019), at 5.

¹⁸Letter from Alexis R. Long, Legislative Specialist for Regulatory Matters, City of Chicago, Department of Law, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (November 4, 2019), at 5.

██████████ contended that the Mayor's Office has significant control over the Advisory Committee: "The Mayor manages the [Advisory Committee], chooses [Advisory Committee] member organizations, and published the [Advisory Committee]'s first recommendations in a document that displays the City of Chicago seal on its cover."²⁰

(5) Whether the group has a budget

██████████ The Department stated that the Committee does not have a budget of its own. ██████████ noted that although the Advisory Committee did not have its own budget, the City allocated a continued investment of \$25 million in its 2020 budget for compliance with the Consent Decree.

(6) The entity's place within the larger organization or institution of which it is a part

The Department asserted, in pertinent part: "[The Committee] is not in itself a government department with any regulatory authority, but rather a group of volunteers. The Advisory Committee, formed through Consent Decree, is merely an *ad hoc* group created for a single task; it is not a part of the larger structure of City government."²¹

(7) The impact of decisions or recommendations that the group makes

The Department argued that the Advisory Committee's recommendations are non-binding. The Department contended that while the Consent Decree provided a procedure for responding to the Advisory Committee's recommendations, the City could decline any of those recommendations. Additionally, the Department argued that the Advisory Committee could not take any final actions or make any decisions on behalf of the City.

¹⁹Letter from Alexis R. Long, Legislative Specialist for Regulatory Matters, City of Chicago, Department of Law, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (November 4, 2019), at 6.

²⁰E-mail from Judge ██████████ to AAG Teresa Lim (December 20, 2019).

²¹Letter from Alexis R. Long, Legislative Specialist for Regulatory Matters, City of Chicago, Department of Law, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (November 4, 2019), at 6.

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After reviewing both parties' arguments in light of the *Stukel* factors, this office concludes that the Advisory Committee is a public body subject to the requirements of OMA. Black's Law Dictionary defines a "consent decree" as "[a] court decree that all parties agree to." Black's Law Dictionary (11th ed. 2019), available at Westlaw BLACKS. The Consent Decree is a legally enforceable agreement. Therefore, even though the Advisory Committee was not created pursuant to an authorizing statute, ordinance, or resolution, the City was nevertheless legally bound to create the Advisory Committee according to the terms of the Consent Decree. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 44489, issued February 15, 2018, (concluding that an advisory board, formed pursuant to an intergovernmental agreement, constituted a "public body" under OMA where the board exhibited, in part, characteristics of a public body under the *Stukel* factors).

Although the Advisory Committee does not have bylaws, the Consent Decree specifically sets forth the Advisory Committee's responsibilities, composition, and minimum meeting schedule, which signal the formality of the Advisory Committee. In contrast to the Department's claim that the Advisory Committee serves a limited purpose and merely advises on the topic of "crisis intervention response," the Consent Decree gives the Advisory Committee broad advisory duties covering a wide range of issues within that topic. Those issues impact multiple city agencies. In addition to the duties listed above in paragraph 130, the Consent Decree also requires that:

131. Within 365 days of the Effective Date, the City will request that the Advisory Committee identify and evaluate in writing any opportunities to develop or enhance crisis response-related policies, procedures, and training of City agencies, including CPD, OEMC, and the Chicago Fire Department, and increase municipal and community resources and alternative response options, including rapid-access clinics, drop-off centers, mobile crisis teams, a central non-emergency crisis line, other pre- and post-arrest diversion efforts, and strategies targeted at children and youth. The City will also request that the Advisory Committee identify and evaluate the steps necessary to develop non-criminal justice responses to individuals in crisis, including, but not limited to, a behavioral health unit to provide alternative non-criminal justice responses to individuals in crisis. In evaluating potential community resources and strategies, the Advisory Committee will

identify challenges and opportunities for improvement, if any, and make recommendations.^[22]

Further, while the Advisory Committee does not have investigative powers, it is required, pursuant to paragraph 131, to exercise deliberative functions to "identify and evaluate" specific opportunities and to develop recommendations on a range of topics. In addition, the Advisory Committee's input is requested throughout the Consent Decree's provisions, which also require deliberative powers. For instance, the Consent Decree provides that: (1) "[t]he CIT Program will seek input from the Advisory Committee in the development of the refresher training";²³ (2) "OEMC will consider the response to, identification of, and dispatch of calls for service involving individuals in crisis by OEMC tele-communicators, * * * and any feedback and recommendations from the Advisory Committee" in developing a Crisis Intervention Plan;²⁴ and (3) "CPD will seek input from community stakeholders, including the Advisory Committee, for recommendations to identify appropriate and respectful terminology" to communicate about incidents involving individuals in crisis.²⁵

Regarding governmental control, the Mayor's Office appears to play a considerable role as the chair in facilitating meetings. Notably, the Consent Decree gave the Mayor's Office authority to invite individuals to join the Advisory Committee. Representatives from other City departments also participated as committee members, suggesting that the City had some influence over the development of the Advisory Committee's recommendations.

Although the Advisory Committee does not have a budget of its own or provide compensation for its members, this office has previously concluded that the absence of direct public funding for an entity is not dispositive for purposes of determining whether the entity constitutes a public body under OMA. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr.

²²*State of Illinois v. City of Chicago*, Case No. 17-cv-6260, Consent Decree, IV. Crisis Intervention, I. Advisory Committee, 131 (filed January 31, 2019), <http://chicagopoliceconsentdecree.org/wp-content/uploads/2019/02/FINAL-CONSENT-DECREE-SIGNED-BY-JUDGE-DOW.pdf>.

²³*State of Illinois v. City of Chicago*, Case No. 17-cv-6260, Consent Decree, IV. Crisis Intervention, C. Certified CIT Officer Designation, 99 (filed January 31, 2019), <http://chicagopoliceconsentdecree.org/wp-content/uploads/2019/02/FINAL-CONSENT-DECREE-SIGNED-BY-JUDGE-DOW.pdf>.

²⁴*State of Illinois v. City of Chicago*, Case No. 17-cv-6260, Consent Decree, IV. Crisis Intervention, G. Crisis Intervention Plan, 122 (filed January 31, 2019), <http://chicagopoliceconsentdecree.org/wp-content/uploads/2019/02/FINAL-CONSENT-DECREE-SIGNED-BY-JUDGE-DOW.pdf>.

²⁵*State of Illinois v. City of Chicago*, Case No. 17-cv-6260, Consent Decree, IV. Crisis Intervention, J. Crisis Intervention Policies, 135 (filed January 31, 2019), <http://chicagopoliceconsentdecree.org/wp-content/uploads/2019/02/FINAL-CONSENT-DECREE-SIGNED-BY-JUDGE-DOW.pdf>.

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44489, issued February 15, 2018; Ill. Att'y Gen. PAC Req. Rev. Ltr. 50176, issued December 5, 2018.

Finally, even though the Advisory Committee's recommendations are non-binding, they have a meaningful impact. As [REDACTED] emphasized, Paragraph 131 of the Consent Decree requires the City to respond to each of the Advisory Committee's recommendations:

The City will address the feedback and recommendations identified by the Advisory Committee, including identifying recommendations that it will adopt, and the plan for implementation, in the Crisis Intervention Plan. The City will respond to each of the recommendations made by the Advisory Committee. **The response will include a description of the actions that CPD has taken or plans to take with respect to the issues raised in the recommendations. If the City declines to implement a recommendation, it will explain the reason(s) for declining.**^[26] (Emphasis added.)

The Department minimizes the import of the Advisory Committee's recommendations by asserting that the City can decline them, but it failed to acknowledge the significance of the Consent Decree's provision that the City must justify any decision to decline one of the recommendations. The requirements described in Paragraph 131 indicate that the Advisory Committee is more than an informal advisor and that the City cannot treat the Advisory Committee's recommendations as mere suggestions, but must carefully consider them. Further, recommendations by an "advisory" body are inherently non-binding.

Accordingly, this office concludes that the Advisory Committee is a "public body" subject the requirements of OMA. This office requests that the Advisory Committee conduct all future meetings in accordance with the provisions of OMA. Among other things, the Advisory Committee should provide advance notice of its meetings (5 ILCS 120/2.02 (West 2018)), keep written minutes (5 ILCS 120/2.06(a) (West 2018)), and provide members of the public with an opportunity to address Advisory Committee members (5 ILCS 120/2.06(g) (West 2018)). This office also requests that Advisory Committee members complete the OMA electronic training curriculum developed and administered by the Public Access Counselor. *See* 5 ILCS 120/1.05 (West 2018).

²⁶*State of Illinois v. City of Chicago*, Case No. 17-cv-6260, Consent Decree, IV. Crisis Intervention, I. Advisory Committee, 131 (filed January 31, 2019), <http://chicagopoliceconsentdecree.org/wp-content/uploads/2019/02/FINAL-CONSENT-DECREE-SIGNED-BY-JUDGE-DOW.pdf>.

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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,

[REDACTED]
TERESA LIM
Assistant Attorney General
Public Access Bureau

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